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"HIGH RISK OCCUPATIONAL DISEASE NOTIFICATION AND PREVENTION ACT:" RESPONSIBILITIES OF NIOSH

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INTRODUCTION

Good Morning!

It's good to be with you again. Thank you for everything you do every day to protect the health and life of American workers. Your President, Dr. Jim Craig, deserves a great deal of credit. He is either (1) clairvoyant, or (2) greatly skilled in influencing the agenda of Congress!

He set the topic for today's session months ago. Indeed, he told me about it at the AOMA meeting in Philadelphia in the Spring. Now, we are discussing this legislation, less than 1 week after the House of Representatives passed a version of it!

In case you haven't heard, on Thursday and Friday, the House of Representatives debated two versions of proposed legislation dealing with occupational risk notification. By a slender margin, the House passed "HR-162 - The High Risk Occupational Disease Notification and Prevention Act of 1987," - otherwise known as the Gaydos Bill; also by a slender margin, it rejected the Administration-supported substitute known as the "Henry-Jeffords Substitute for HR-162, or "Occupational Disease Prevention Act." The full debate was covered "live" on C-SPAN in Atlanta. I watched most of it. The debate was fascinating for any of us who have labored long in the various vineyards of preventive medicine. Moreover, the debate confirmed again in my mind, the basic strength of our American political systems. I have been discussing and pondering this issue of worker notification for over 6 years and yet, I heard important aspects for the first time during the Congressional debate.

The opponents of HR-162 pressed their attack along two lines: (1) fear that HR-162 would result in lots of tort litigation, and, (2) a depiction of HR-162 as focusing on "secordary" rather than on "primary" prevention.

One had to be greatly encouraged by the nature of this debate. After years of carefully sowing of seeds of understanding about the importance on prevention in occupational health, we now saw Congress in action drawing careful distinctions between "primary" and "secondary" prevention. I was heartened to hear the word "prevention" in frequent use in such hallowed halls.

Whatever bill they supported, I believe the participants in the debate were all genuinely concerned to find ways to protect workers from risks. The debate devolved upon questions of how to do that. No one suggested that workers should not have information about the risks that they face. The storms of debate swirled around ways to provide needed information while neither sacrificing ongoing prevention activities, nor provoking problems that might leave workers worse rather than better off.

BACKGROUND

The concern to notify workers of their risks is not a new one. The Occupational Safety and Health Act is rife with references to a legislative imperative to inform workers. Some examples:

(1) As regards employers, Section 5 of the Act, known as the "General Duty Clause" reads, "each employer.....(2) shall comply with occupational safety and health standards promulgated under this

Act." Turning the page to Section 6(b)(7), one finds the requirement that "any standard promulgated under this Subsection shall prescribe the use of labels or appropriate forms of warning as are necessary to assure that employees are apprised of all risks to which they are exposed...".

Hence employers are charged to comply with standards, and standards are mandated to include information related to risks.

(2) In Section 8(c)(3) the charge to employers is even more explicit. "Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by applicable occupational safety and health standard promulgated under Section 6."

(3) Section 13(c) mandates that whenever an OSHA inspector finds "eminent dangers" in "any place of employment, he shall inform the affected employees and employers of the danger...."

(4) Section 17(i) prescribes penalties such that "any employer who violates any of the posting requirements as prescribed under provisions of this Act, shall be assessed a civil penalty of up to $1,000.00 for each violation."

(5) Section 20, the section of the Act, which deals with research provides in Part (d) that "information obtained by the Secretary, and

the Secretary of Health, Education, and Welfare, under this Section, shall be disseminated by the Secretary to employers and employees and organizations thereof."

(6) In Section 12(g) even the Occupational Safety and Health Review Commission is mandated to inform, by a provision that "every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public."

Now I conclude from all this, that the framers of the Occupational Safety and Health Act clearly meant that workers should be informed of their risks. Viewed in this light, the recently expanded OSHA Hazard Communication Standard, and the particular legislation we are discussing today, seem to represent predictable further steps in fulfilling a dream spelled out in the Occupational Safety and Health Act.

THE RESPONSIBILITIES OF NIOSH

Well, what provisions in HR-162 affect NIOSH? There are several. The Bill:

(1) establishes a nine person risk assessment board, chaired by the Director of NIOSH. The Board will review existing and emerging evidence of increased risks among groups of workers.

(2) requires that whenever the Risk Assessment Board determines a group of workers to be at increased risk and deserving of notification, the Secretary of Health and Human Services is required

to individually notify all workers in the group, if possible. Because most occupational mandates to the Department of Health and Human Services are delegated by the Secretary to the Director of NIOSH, we expect to be devising and distributing the notices envisioned under HR-162.

(3) provides that workers at increased risk will be medically screened and monitored under arrangements worked out by their employers. In this we might be expected to provide consultation and advice both to the employer and health care providers involved.

(4) requires that readily available information be developed and disseminated. The specified means include a "hotline," which would presumably be managed by NIOSH.

(5) establishes a network of occupational health centers, first 10, ultimately 50, to assist physicians and other health and social professionals in assisting notified workers. The Bill specifies that this network grow out of the existing ERC Program, which is managed by NIOSH.

(6) permits the Secretary of Health and Human Services to award research grants to occupational health centers and other institutions. Because we already manage an extramural research grant program in occupational safety and health, we presume we would also be expected to manage this extramural research grant activity.

It is well to mention that some very significant amendments were added to the Bill, relating to AIDS, Dioxin, and other issues. I haven't seen a full text of these amendments, so it is much too early to be definitive about all this Bill may mean for NIOSH.

THE PRESENT PROGRAM OF NIOSH FOR NOTIFYING WORKERS

Background

In the meantime, however, we in NIOSH are continuing to develop our own program of worker notification. Lots of people are unaware that we have been extensively engaged in worker notification throughout the existence of NIOSH. For example, as part of each of the more than 500 health hazard evaluations we perform each year, we send reports to the requestor, the company, employee representatives, union headquarters, the Department of Labor, and appropriate State and local agencies, as well as require that the report be posted at the worksite for 30 days, or sent individually to all affected employees. That's a lot of notification.

Whenever we perform a medical test on anybody, we send the results of that test to the individual, and to a health care provider designated by the individual. That's a lot of notification.

By similar means, we widely report findings of industrial hygiene surveys and cross-sectional medical studies. That's a lot of notification. Moreover, all of our field and laboratory findings are extensively reported in the scientific literature, both peer reviewed and other. That's a lot of notification.

Well you say, "then why has NIOSH been so interested in pursuing a further worker notification effort?" The answer is straightforward. Over the years we have done about 90 retrospective cohort mortality studies, and similar epidemiological studies based on an analysis of records. Almost without exception, these studies involved no personal contact between NIOSH and any of the individuals whose records (e.g. death certificates) were studied. The problem is that in a number of such studies, we have found elevated risks for the cohort of people who have been identified. Thus, in some studies we wind up with information defining an excess risk, and the names of individuals who are in the cohort for which an increased risk was found. The question then is "should we individually notify these people of the risks observed in the cohort?" That question has been on the plate of at least three NIOSH Directors, Drs. Finklea and Robbins, and me.

There was a Congressional hearing in 1977 in which Dr. Finklea reviewed the problem in considerable depth. That same year, NIOSH began exploring the problem directly by initiating its first pilot project. In that study, some 55 terminated workers whose medical records were submitted to NIOSH in accordance with the OSHA carcinogen regulation, were notified of their risks. Forty-nine percent of them responded by asking NIOSH to send information to their physicians, however, none were known to have actually contacted their physicians.

The Augusta Study

In 1979, during the directorship of Dr. Robbins, NIOSH began the now famous study in Augusta, Georgia, of chemical workers exposed to beta-napthalamine. Of the 1,385 workers in the cohort, 1,094 were estimated to be alive, locatable, and potentially notifiable. Of these, 849 were found and notified. Of those notified, 655 participated in a medical screening program for bladder cancer and an educational program conducted in collaboration with State and local health departments, the Medical College of Georgia, and the Worker Institute for Safety and Health. Five new cases of bladder cancer were found as a direct result of this notification program, bringing to 15 the total number of cases of bladder cancer identified to date in the group. Twenty-two other individuals were found to have suspicious urine cytology suggesting they should be under closer medical scrutiny in the future.

Unfortunately when you hear about the Augusta study - repeatedly cited during the Congressional debate last week - you are most unlikely to hear about the lives that were saved. You are most unlikely to hear about the effective community organization work involving company, labor groups, health departments, the medical college, and the citizenry by which workers were identified and reached. You are most unlikely to hear of the high quality of the medical screening and intervention services which were offered, and accepted by the workers, and which have had demonstrably vital consequences for those found with malignant and pre-malignant conditions.

On the contrary, when you hear about the Augusta study, you are very likely instead to hear only one thing...."350 million dollars worth of law suits were filed by workers against the company." Always lost in the rhetoric about this litigious development, is the fact that these suits were either settled by the company (for a total of a half million) dollars, or were thrown out by the Georgia Supreme Court.

However skewed were the public discussions of the Augusta study, there were several useful lessons learned there. We brought those lessons together and from them we derived a proposed set of criteria for examining such cohorts in the future to decide whether or not the workers in them should be individually notified. This instrument was initially called the "Proposed Worker Notification Decision Logic" and submitted to the NIOSH Board of Scientific Counselors for scientific review. They recommended several modifications, including a new title - "Guidelines for Notification of Individual Workers." This document, an important specific product of the interaction between NIOSH and its Board of Scientific Counselors, has been a guiding light in the serious thinking about individual worker notification. This document was referred to by all the major legislative proposals introduced into Congress on this subject.

THE NIOSH "GUIDELINES FOR NOTIFICATION OF INDIVIDUAL WORKERS"

The guidelines increasingly serve as the model for such activities. They suggest the following steps:

(1) Determine whether or not the study was appropriately designed and analyzed to consider whether or not the findings are consistent with those of other studies.

(2) Establish whether or not the survivors are still at risk.

(3) Determine whether or not the cohort has been previously notified.

(4) Based on the degree of absolute and attributable risk, determine the appropriate type of notification, if any.

With the beginning of fiscal year 1988, NIOSH will apply these Guidelines to all current, and any newly planned studies. Using the Guidelines and with the continuing assistance of our Board of Scientific Counselors, we are assessing the backlog of approximately 90 studies to determine which ones should result in notification, and the type of notification to be done.

CONCLUSION

As you can surmise, irrespective of the ultimate fate of HR-162, we in NIOSH are proceeding with our own worker notification activities. To do so with prudence, we need to be sure of the validity of our information, so that we do not unduly alarm people. Moreover, our information is about groups of workers, not individuals; we must exercise great care and scientific propriety in translating information on groups into terms of individual risk.

In order for us to proceed with these activities, we needed no new legislation. On March 17, 1987, the Administration sent a letter to Congressman Augustus Hawkins, Chairman of the House Education and Labor Committee, which endorsed the NIOSH Worker Notification Program (as I have described it to you) as well as the principles outlined in the "Guidelines for Notification of Individual Workers."

Regardless of any new legislation, when NIOSH has information that might be useful to individual workers, for prevention, we believe it is our responsibility to share that information. For a long time we have felt that that is the right thing to do. We intend to do it.

Thank you.

e California Department of Industrial Relations, Division of Labor Statistics and
esearch, has recently issued "Occupational Disease in California 1984." The sixty-five
ge report covers types of disease, causal agents, disability and hospitalization, fatalities.
d includes a sample occupational illness or injury report form. The publication is
ailable from the Division of Labor Statistics and Research, P.O. Box 603, San Francisco,
lifornia 94101.

ALL FOR PAPERS FOR THE 1989 AMERICAN OCCUPATIONAL HEALTH CONFERENCE

he American Occupational Medical Association is calling for papers to be presented at the
89 American Occupational Health Conference to be held April 29 - May 5 in Boston. AOMA
ouncils, Sections, and interested parties are asked to submit a 150-200 word abstract
iving details of the study and its application to the daily practice of occupational medicine
the Program Chairman:

Eugene H. Kremer, III, M.D.
Occupational Physician Services Louisville
Suburban Medical Plaza
4001 Dutchmans Lane, Suite 1-A
Louisville, Kentucky 40207

The deadline for submission of abstracts is December 31, 1987.

AOMA FEDERAL I.D. NUMBER

Again this year the American Occupational Medical Association is asking its members to
upply their employers with AOMA's federal tax identification number when requesting
mployer funds for payment of AOMA dues, etc. Without this number employers are
equired by law to withhold 20% of any amount due the Association. Therefore, please
se the following number when requesting payments be made out to the Association:

AOMA FEDERAL I.D. NUMBER: 36-0722847

lease note that this number is only to be used when requesting payment for AOMA or
AOHC related activities.

FINAL HAZARD COMMUNICATION RULE ISSUED BY OSHA

In order to reduce the incidence of chemically-related occupational illness and injuries the
Occupational Safety and Health Administration (OSHA) has revised its Hazard Communicat
Standard, which currently applies to the manufacturing sector, to cover all employers with
employees exposed to hazardous chemicals in their workplaces. Expansion of the scope of
the standard requires non-manufacturing employers to establish hazard communication
programs to transmit information to the employees on the hazards of chemicals by means of
labels on containers, material safety data sheets, and training programs.

The standard also states that where a treating physician or nurse determines that a medica
emergency exists and the specific chemical is necessary for emergency or first-aid treatme
the specific chemical identity of a trade secret chemical will be immediately disclosed to the
treating physician or nurse regardless of the existence of a written statement of need of a

confidentiality agreement. Also covered under the rule are non-emergency situations where chemical identity can be disclosed.

The revised standard requires that chemical manufacturers, importers, and distributors ensure that material safety data sheets are provided with the next shipment of hazardous chemicals to non-manufacturing employers or distributors after September 23, 1987. All employers in the non-manufacturing sector are to be in compliance with all provisions of the standard by May 23, 1988.

For further information about the final rule contact James F. Foster, Office of Information and Consumer Affairs, OSHA, 200 Constitution Avenue, N.W., Room N-3637, Washington, D.C. 20210; telephone: 202/523-8151.

ACADEMY ELECTS NEW OFFICERS AND DIRECTORS

The American Academy of Occupational Medicine (AAOM) installed new officers and directors at its October 22 Annual Business Meeting held in San Francisco. Assuming the Presidency of the Academy is Frank A. Ubel, M.D., Medical Director of 3M in St. Paul, Minnesota. The new President-Elect is O. Bruce Dickerson, M.D., President, Dickerson Associates, New Canaan, CT; the new Vice President is Mel A. Amundsen, M.D., Chairman, Division of Preventive Medicine, Mayo Clinic, Rochester, MN. Re-elected to office were Treasurer Jerry J. Appelbaum, M.D., Corporate Medical Director, Gates Corporation, Denver; and Secretary Harold R. Imbus, M.D., President, Health & Hygiene, Inc., Greensboro, NC. Five new Directors also took office at the October 22nd meeting: Joel R. Bender, M.D., Medical Director of Conoco, Inc., Houston, TX; Edward J. Bernacki, M.D., Vice President of Tenneco, Inc., Houston, TX; Vernon N. Dodson, M.D., Professor of Medicine and of Preventive Medicine, University of Wisconsin, Madison; Jon L. Konzen, M.D., Vice President, Medical and Health Affairs at Owens-Corning Fiberglas Corp., Toledo, OH; and Gary R. LeClercq, M.D., Corporate Director, Occupational Health for Bristol-Myers Company, New York City, New York.

AMERICAN OCCUPATIONAL HEALTH CONFERENCE TO BE HELD IN NEW ORLEANS

The 1988 American Occupational Health Conference will be held April 23-29, in New Orleans. An advance program will be mailed to all members of the American Occupational Medical Association in late January. The complete program will also appear in the February issue of the Journal of Occupational Medicine. Please mark your calendar for this important event.

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